

REMARKS/ARGUMENTS

Reconsideration of this application is respectfully requested in view of the foregoing amendments to the claims and the following remarks.

Claims 10-19 are pending and have been rejected.

The examiner is thanked for the courtesy extended to the undersigned during a telephone interview conducted on March 15, 2006. The above amended claim 10 was discussed as well as the two patents that were used to reject the claims in the prior office action. No agreements were reached during the interview although the examiner did indicate that the above amendments would be carefully considered and that they might be sufficient to distinguish from the art of record. The undersigned agreed to supplement the comments made during the interview with added arguments and remarks as set out in this response.

In the office action, the examiner has rejected claims 10, 12-14, 17, and 18 under 35 U.S.C. §102(b) as anticipated by U. S. Patent No. 6,599,057, Thomas et al, hereinafter "the Thomas patent." This rejection is respectfully traversed.

Applicants believe that the claims now presented are distinguishable from the Thomas patent for a number of reasons. As indicated to the examiner during the interview, the amendment to subparagraph (a) of claims 10 and 17 indicate that the bitumen-coated aggregate has been formed by coating with bitumen. The recycle material of the Thomas patent may contain bitumen but as indicated in the Thomas patent, this recycle material has been ground up to form the aggregate. This aggregate may also contain bitumen, but is not coated with bitumen or is not formed by coating with bitumen. The RAP material of the Thomas patent is different from the bitumen-coated aggregate of claims 10 and 17. The aggregate might contain RAP but the RAP will have been coated with bitumen in a similar manner to non-recycle aggregate.

In addition, subparagraph (b) of claims 10 and 17 has been amended to use the partially closed term "consisting essentially of." While the amended language will exclude compositions that contain asphalt type materials, the mixture can contain small amounts of other additives as indicated in the specification. In the Thomas patent, the emulsion that is added to the aggregate is primarily asphalt material, see column 4. While the exact composition of the emulsion disclosed in the Thomas patent may change, it is clear that the primary component of

the emulsion is asphalt. For instance, the preferred composition as set out in column 4, lines 25-27 of the Thomas patent contains 60-65% by weight of asphalt solids. For at least the above reasons, it is believed that the continued rejection of claims 10, 12-14, 17, and 18 based on the Thomas patent is no longer warranted and should be withdrawn.

The examiner has also rejected claims 10, 15, 16, and 19 under 35 U.S.C. §102(b) as anticipated by U. S. Patent No. 6,588,973, Omann, hereinafter "the Omann patent." This rejection as it applies to the above amended claims is respectfully traversed.

The Omann patent is directed to a very different type of system and method than the method and device as claimed in the present application. The Omann patent is directed to a system to coat the aggregate with bitumen materials. Water is used in the Omann patent to increase the fluidity of the materials in the hammer mill and also to reduce dusting. The use of water in the Omann patent is before the aggregate has been coated with bitumen materials or before rejuvenating oil is added to the asphalt containing aggregate. The emulsifier mentioned in column 9 of the Omann patent is used in a non-aqueous environment to permit the "petroleum products to blend and loosen up to coat the aggregate while yet handle any moisture content." The moisture content here is residual moisture carried over, at least in part, from the water that was added during the hammer milling process. Example 1 in column 9 makes this very clear. There is no disclosure of adding a mixture of water and emulsifier to the bitumen-coated aggregate as set out in claims 10 and 17. For at least the above reasons, the continued rejection of claims 10, 15, 16, and 19 based on the Omann patent is no longer warranted and should be withdrawn.

The examiner has also rejected claim 11 under either 35 U.S.C. §102(b) or alternatively under 35 U.S.C. §103(a) based on the Thomas patent. This rejection is traversed.

As noted above, the Thomas patent does not disclose a mixture of water and wetting agent as claimed. With regard to obviousness based on the Thomas patent, the examiner is invited to consider that the method of the present invention takes a bitumen-coated aggregate material and mixes this bitumen-coated aggregate with a mixture primarily containing water and a wetting agent, such as the surfactant materials as disclosed in the specification, to form an asphalt paving material immediately before the asphalt paving material is spread to pave a

surface. This has advantages of allowing for the use of materials at a lower temperature and providing more flexibility in the paving process. By forming the asphalt emulsion immediately prior to spreading, the temperature of the paving material need not be as carefully controlled as in prior processes. Therefore, a person of ordinary skill would not have appreciated the advantages of the method and device of the present invention. Therefore, the continued rejection of claim 11 is unwarranted and should be withdrawn.

Applicants believe that the present application has been placed in condition for allowance. Early favorable action is requested. If the examiner believes there are any issues remaining, the examiner is invited to call the undersigned to attempt to resolve these issues.

Deposit Account Authorization

The Commissioner is hereby authorized to charge any deficiency in any amount enclosed or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17, except issue fees, to Deposit Account No. 50-1903.

Respectfully submitted,

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By: 

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